

### § 530.303

any violation of the Act or of this part or of the assurances given in connection with the issuance of a certificate.

(b) The amount of civil money penalties shall be determined per affected homeworker within the limits set forth in the following schedule, except that no penalty shall be assessed in the case of violations which are deemed to be *de minimis* in nature:

| Nature of violation  | Penalty per affected homeworker |             |                                  |
|--|---------------------------------|-------------|----------------------------------|
|  | Minor                           | Substantial | Repeated, intentional or knowing |
| Recordkeeping .....  | \$10-100                        | \$100-200   | \$200-500                        |
| Monetary violations .....  | 10-100                          | 100-200     | .....                            |
| Employment of homeworkers without a certificate .....                  | .....                           | 100-200     | 200-500                          |
| Other violations of statutes, regulations or employer assurances ..... | 10-100                          | 100-200     | 200-500                          |

### § 530.303 Considerations in determining amounts.

(a) In determining the amount of a penalty within any range, the Administrator shall take into account the presence or absence of circumstances such as the following:

- (1) Good faith attempts to comply with the Act or regulations;
- (2) Extent to which the violation is under the employer's control;
- (3) Non-culpable ignorance of the requirements of the Act or regulations;
- (4) False documents or representations; and
- (5) Exercise of due care.

(b) An employer's financial inability to meet obligations under the Act shall not constitute a mitigating or extenuating circumstance.

(c) No civil money penalty shall be assessed against an employer, who applies for a certificate, solely for employing homeworkers, provided the employer is not currently under investigation by the Wage and Hour Division.

### § 530.304 Procedures for assessment.

Assessment of penalties pursuant to this section, including administrative proceedings, shall be in accordance with the procedures set out in subpart E of this part.

## 29 CFR Ch. V (7-1-98 Edition)

### Subpart E—Administrative Procedures

SOURCE: 53 FR 45725, Nov. 10, 1988, unless otherwise noted.

### § 530.401 Applicability of procedures and rules.

The procedures and rules contained herein prescribe the administrative process which will be applied with respect to a determination to deny (including refusal to renew) or revoke a certificate and to a determination to assess civil money penalties. Special rules and procedures for the emergency revocation of certificates are prescribed in § 530.412 of this subpart.

### § 530.402 Notice of determination.

Whenever the Administrator determines to deny or revoke a certificate or determines to assess a civil money penalty, the person affected by such determination shall be notified of the determination in writing, by certified mail to the last known address. The notice required shall:

(a) Set forth the determination of the Administrator, including the specific statutory or regulatory provision or assurance violated, the reasons for denying or revoking a certificate, or the amount of any civil money penalty assessment and the reason or reasons therefor.

(b) Set forth the right to request a hearing on such determination.

(c) Set forth the time and method for requesting a hearing, and the procedures relating thereto, as set forth in § 530.403 of this subpart.

(d) Inform any affected person or persons that in lieu of formal proceedings there is available an alternative summary proceeding under § 530.412 of this subpart.

(e) Inform any affected persons that in the absence of a timely request for a hearing the determination of the Administrator shall become final and unappealable.

### § 530.403 Request for hearing.

(a) Except in the case of an emergency revocation under § 530.411 of this subpart, a request for an administrative hearing on a determination referred to in § 530.402 of this subpart